

TITLE 22. SOCIAL SERVICES
VAC AGENCY NO. 15 CHILD DAY-CARE COUNCIL
CHAPTER 20. GENERAL PROCEDURES AND INFORMATION FOR LICENSURE
PART I. INTRODUCTION

22 VAC 15-20-10. Definitions.

The definitions set forth in 22 VAC 15-30-10 shall govern unless expressly modified below.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

~~"Adult care facility" means a licensed adult care residence or adult day care center.~~

~~"Allegation" means an accusation that a facility which that is subject to licensure is operating without a license.~~

~~"Allowable variance" means (i) permission to meet the intent of a standard by some means other than as specified by the standard, or (ii) the suspension of enforcement of a particular standard or portion of the standard for a stated time period.~~

"Allowable variance" means the waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines (i) enforcement will create an undue hardship; (ii) the standard is not specifically required by statute or by the regulations of another government agency; and (iii) care of children will not be adversely affected.

"Applicant" means the person, corporation, partnership, association, or public agency ~~which~~ that has applied for a license.

~~"Board" means the State Board of Social Services.~~

"Child day center system" means any person who is voluntarily licensed as such who operates, manages, or accredits as members of its system, 50 or more child day center sites in the Commonwealth.

~~"Child welfare agency" means a child day center, child day center system, child placing agency, child caring institution, family day home, family day system, or independent foster home.~~

"Commissioner" means the Commissioner of the Department of Social Services.

~~"Complaint" means an accusation that a licensed facility is not in compliance with licensing standards or law.~~

"Conditional license" means a license ~~which~~ that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Council" means the Child Day-Care Council.

"Days" means calendar days unless otherwise specified.

~~"Denial" means the act of refusing to grant a license after receipt of an original initial or renewal application.~~

"Department" means the Department of Social Services.

~~"Early compliance" means replacement of a provisional or conditional license with a regular license.~~

"Functional design" means the design features of building and grounds not regulated by the Building Code, necessary for particular activities and operations of a facility subject to licensure by the Department of Social Services.

~~"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of children or adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.~~

"Licensee" means the person, corporation, partnership, association, or public agency to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the facility.

"Person" means individuals or other entities such as corporations, partnerships, associations or public agencies to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the facility.

"Probationary status" means the placing of a licensee on notice that the child ~~welfare agency~~ day center or center system is substantially out of compliance with the terms of its license and the health, safety, and well-being of children are at risk. Probationary status is a precursor to more serious action

such as revocation, denial, or injunctive action unless immediate corrective action occurs.

"Provisional license" means a license ~~which~~ that may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the standards.

"Regular license" means a license ~~which~~ that is issued ~~for 12 months or more~~ as provided in ~~Chapters 9 and~~ Chapter 10 of Title 63.1 of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.

"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.

22 VAC 15-20-20. ~~Preplanning.~~

~~A. Licensing staff are available throughout the application/licensing process to answer questions and provide consultation and technical assistance (see 22 VAC 15-20-130).~~

~~— B. In order to avoid costly errors, applicants and prospective applicants are urged to present their building plans to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations (see 22 VAC 15-20-150).~~

~~C. In addition to making an on-site inspection of the proposed facility and the proposed services, the department will investigate the financial responsibility of the licensee and will investigate the character and reputation of the licensee and, if required, staff and household members (see 22 VAC 15-20-160).~~

PART II. LICENSING STANDARDS.

22 VAC 15-20-30. ~~Responsibility of the department.~~

~~Through the administration of the licensing program, the Department of Social Services assumes responsibility to ensure that licensed facilities and agencies provide children and adults with at least a minimum level of care in accordance with standards prescribed by the State Board of Social Services and Child Day Care Council. The department also has the responsibility to investigate allegations. The Virginia Code requires the State Board of Social Services to adopt standards and regulations for the licensure of the following categories of facilities and agencies:~~

- ~~1. Adult day care centers;~~
- ~~2. Adult care residences;~~

3. Private child placing agencies;
4. Child caring institutions;
5. Independent foster homes;
6. Family day homes;
7. Family day systems; and
8. Child day center systems.

—The Virginia Code requires the Child Day Care Council to adopt standards and regulations for the licensure of child day centers.

~~22 VAC 15-20-40. Adoption of standards.~~

~~The State Board of Social Services or the Child Day Care Council has adopted a set of standards for each category listed above. The definition of each category and requirements for licensure are contained in each set of standards.~~

~~22 VAC 15-20-50. Standards development/revision process.~~

~~A. In developing or revising standards for licensed facilities or agencies, the Department of Social Services, acting as agent for the State Board of Social Services and Child Day Care Council, adheres to the requirements of the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia) and the public participation process.~~

—~~B. The department Council solicits input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers and the general public in the development or revision of licensing standards through informal and formal comment periods and public hearings.~~

—~~C. The department Council conducts periodic reviews and, when necessary, comprehensive revisions of each set of standards to assure that its standards continue to protect vulnerable children and adults in out of home care while considering the interests of both providers and consumers of care.~~

PART III. THE LICENSE

22 VAC 15-20-60. General.

A license to operate a facility ~~or agency~~ is issued to a specific person or organization to provide ~~out-of-home care to children in a child day center or a center system~~ for adults. An organization may be a partnership, association, corporation, or public entity.

22 VAC 15-20-70. ~~Non~~ Transferability of license.

~~A license is not transferable~~ The license shall be surrendered and returned to the department when there is a change in the ownership or location of the facility or agency to which the license has been was issued. Licenses may be transferred only to persons meeting all requirements set forth in the Code of Virginia and regulations.

~~EXCEPTION: Licenses issued for private child placing agencies and family day systems are transferable when agencies change location.~~

22 VAC 15-20-80. Conditional license.

~~The department may issue a conditional license to a new facility or agency in order to permit the applicant to demonstrate compliance with specified standards. A conditional license may be effective for any period not to exceed six consecutive months. When this period expires, the facility or agency must substantially meet the standards or be denied a license. Conditional licenses may be used only for new facilities or agencies.~~

~~EXCEPTION: With the approval of the appropriate fire marshal, a second conditional license may be issued to a licensee to permit the licensee additional time to comply with the Fire Prevention Code when the licensee has purchased an existing licensed facility for adults.~~

22 VAC 15-20-90. Regular license.

A regular license is issued when the activities, services, facilities, and applicant's financial responsibility substantially meet the requirements for a license that are set forth by standards adopted by ~~the State Board of Social Services or the Child Day Care Council~~ and any additional requirements that may be specified by the Code of Virginia.

22 VAC 15-20-100. Duration of licensure.

~~Each license and renewal thereof may be issued for a period of up to three successive years. The criteria for determining the periods of licensure are based on the activities, services, management, and compliance history of the facility.~~

~~A triennial license may be issued when a facility's activities, services and management routinely and substantially exceed the minimum standards.~~

~~— A biennial license may be issued when a facility's services and management routinely meet and maintain compliance with minimum standards and may exceed on a sustained basis in some areas.~~

~~— An annual license may be issued when a facility's activities, services and management indicate an inconsistent level of compliance but substantial compliance is reached. Some reinforcement and guidance are needed in order for the facility to meet or maintain minimum requirements.~~

The period of licensure shall be determined by the Commissioner in accordance with § 63.1-196.1 of the Code of Virginia. Once established, the duration of licensure shall be uniformly applied to all applicants. The Department shall not have the discretion to vary durations among licensees.

22 VAC 15-20-110. Provisional license.

~~When a regular license expires and the applicant is temporarily unable to comply with the requirements of the standards, the department may issue a provisional license for any period not to exceed six months. A provisional license shall not be issued to a facility or agency that holds a conditional license. When a period of six consecutive months of a provisional license expires, the facility or agency must substantially meet the standards and requirements or be denied a license.~~

~~EXCEPTION: With the approval of the appropriate fire marshal, a second provisional license may be issued to a facility for adults to permit the licensee additional time to comply with the Fire Prevention Code.~~

22 VAC 15-20-120. Terms of the license.

A. A facility ~~or agency~~ shall operate within the terms of its license.

B. The terms of any license include:

1. The operating name of the facility ~~or agency~~;
2. The name of the individual, partnership, association, corporation, or public entity sponsoring the facility ~~or agency~~;
3. The physical location of the facility ~~or agency~~;
4. The maximum number of children ~~or adults~~ who may be in care at any time;
5. The period of time for which the license is effective; and
6. For child care facilities or agencies, the age range of children for whom care may be provided.

~~C. The terms of a license may include other limitations which the department may prescribe within~~

~~the context of the standards for any facility or agency.~~

~~D. The provisional license cites the standards with which the licensee is not in compliance.~~

~~E. The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.~~

F. Prior to changes in operation ~~which~~ that would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. ~~(See 22 VAC 15-20-190.)~~ The department will evaluate written information about any planned changes in operation and will respond to the licensee either with a modified license or an explanation of why the modification was not granted. The licensee may request a modification of the terms of a license at any time during the period of the license. The request must be submitted in writing to the department's representative.

G. The following documents shall be posted in a prominent place at each public entrance of the licensed premises, when applicable:

1. The most recently issued license;
2. The most recent compliance plan or a written notice of where it may be reviewed in the facility;
3. Probationary status announcements; and
4. Denial and revocation notices.

PART IV. THE LICENSING PROCESS

22 VAC 15-20-130. Preapplication consultation.

Upon request, the department's licensing representative will provide consultation to any person or persons seeking information about obtaining a license. The purpose of such consultation ~~is~~ shall include, but not be limited to:

1. ~~To explain standards and~~ Explaining the licensing process;
- 2. ~~To help the potential applicant explore the operational demands of a licensed facility or agency;~~
- 3. ~~To provide assistance in locating other sources of information;~~
- 4. ~~To alert the potential applicant to the value of assessing the need for a facility or agency in the area to be served;~~

~~5. To review the potential applicant's proposed program plans, forms, etc., as they relate to standards; and~~

6. ~~2 To alert~~ Alerting the potential applicant regarding the need to meet other state and local ordinances, such as health, fire, and building codes, where applicable.

22 VAC 15-20-140. The initial application.

~~A. Upon request, the department will provide an application form for a license to operate a facility or agency. There are a number of licensing offices located throughout the state. The location, telephone number and areas served by each office are provided in Attachment I of this chapter.~~

B. The department ~~shall~~ will consider an application complete when the application fee and all the required information is submitted in the form required by the department. The schedule of fees for licenses is provided in 22 VAC 40-160-10 et seq., Fee Requirements for Processing Applications. If the department finds the application incomplete, the applicant will be notified within 15 days of receipt of the incomplete application.

~~C. The applicant shall complete and submit the application to the department at least 60 days prior to a planned opening date to allow the department time to act on the application. The Department will take action on a completed application within 60 days.~~

~~D. The applicant may withdraw a request for a license.~~

22 VAC 15-20-150. Approval of functional design features.

~~A valid certificate of occupancy is one prerequisite for licensure. When an application is for licensure of a building which has not previously been used for the type of license or use group being sought, or when renovations are made in the building, the department must approve functional design features of the building in accordance with applicable department regulations.~~

~~The procedures are as follows:~~

- ~~1. Prior to beginning construction or renovation, Three prerequisites for licensure are (i) a valid certificate of occupancy for a child day center; (ii) an inspection report from the appropriate state or local fire authority to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code; and (iii) an inspection report from the appropriate health authority. ¶The applicant or prospective applicant shall submit to the department floor plans which that clearly indicate the use of space and other plans for compliance with all requirements for the building, use of space, and bathroom facilities contained in the applicable regulations.~~
2. A new floor plan shall be submitted if there is a change in functional design.

~~(NOTE: Applicants and prospective applicants are urged to present their plans for compliance with departmental regulations to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations. Architects, contractors, or building officials may not be thoroughly familiar with these functional design requirements, and costly errors can be avoided through early review by the department. The plan for structures must clearly indicate the use of space.)~~

~~2. 3. The department will notify the applicant or prospective applicant within 10 working days of receipt if the plans to comply are incomplete, identifying the information still needed before the request can be considered complete.~~

~~3. 4. When a complete plan is received, the department will issue a Preliminary Approval Statement or a letter indicating disapproval of the plan and the reasons for disapproval.~~

~~—(NOTE: A Preliminary Approval Statement does not imply that the department will approve the application for licensure since other factors will affect issuance decisions.)~~

~~—4. All Preliminary Approval Statements are conditional upon there being no change in the proposal or the circumstances affecting them and upon approval of all required fire, health, or building officials.~~

~~—5. The department will forward a copy of the Preliminary Approval Statement to the appropriate building official.~~

~~6. After construction or renovation, department staff will make an on-site inspection to evaluate compliance with the functional design requirements of the applicable regulations. Findings of this on-site inspection will be forwarded to the applicant and the local building official.~~

22 VAC 15-20-160. The investigation.

~~A. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.~~

~~EXCEPTION: Subsection A of this section does not apply to child placing agencies or family day systems.~~

~~1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.~~

~~2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code.~~

~~3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities which shall include approval of general sanitation, water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.~~

B. The department's representative ~~shall~~ will make an on-site inspection of the proposed facility or agency and an investigation of the proposed services; ~~as well as an investigation of the character, reputation and financial responsibility of the applicant, and will investigate the applicant's activities, services, financial responsibility and character and reputation.~~ Compliance with all standards will be determined by the Department of Social Services. The licensee ~~is~~ shall be responsible for correcting any areas of noncompliance found during any on-site inspection.

C. ~~The applicant or licensee shall make available to the department's representative the facility's or agency's books and records. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents or participants, and any person under its custody, control, direction, or supervision.~~

D. ~~After the on-site inspection the licensing representative shall~~ will discuss the findings of the investigation with the administrator or licensee. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

E. ~~At any time during the investigation, an applicant or licensee may request an allowable variance to any standard which that creates a special hardship. (See Part V, Allowable Variance, 22 VAC 15-20-220 et seq.)~~

22 VAC 15-20-170. Notice to the applicant of issuance or denial of a license.

A. When the investigation is completed, the department ~~shall~~ will notify the applicant of its decision regarding the issuance of a license.

B. When the decision is to issue a conditional or provisional license, a letter accompanying the license ~~shall~~ will refer to any areas of noncompliance with standards or areas where compliance cannot be determined, as well as any limitations on the license. The letter also may contain recommendations for the licensee's consideration. A letter will routinely not accompany the issuance of a regular license.

C. When the department intends to deny the license, the department ~~shall~~ will send a letter stating the reasons for this action and the applicant's right to appeal the decision. (See Part VIII, 22 VAC 15-20-330 et seq.)

22 VAC 15-20-180. Determination of continued compliance (renewal and monitoring visits). (licensing inspections).

- A. ~~In order to determine continued compliance with standards during the effective dates of the license, The licensee shall permit the department's licensing representative shall to make announced and unannounced visits to the facility or agency during the hours of its operation. The licensee is shall be responsible for correcting any areas of noncompliance found during renewal or monitoring visits. any licensing inspections.~~
- B. The licensee shall permit the department's licensing representative, at all reasonable times, to inspect the facility and to interview employees and children under the supervision of the center, provided that no private interviews may be conducted with any child without prior notice to the parents of such child.

NOTE: In an investigation of child abuse, neglect, or exploitation in a child day center, the investigation is conducted jointly with the local department of social services whenever possible, in accordance with department policy.

~~B. All licensed child welfare agencies shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.~~

C. At least two inspections of each licensed adult care facility shall be made each year and in every instance the renewal inspection shall be unannounced. The commissioner may authorize such other announced or unannounced inspections as he considers appropriate.

~~D. The department's representative may also make such visits to any homes or facilities that are approved by the licensee for the placement or care of children as one of the licensed services of the agency.~~

~~NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced visits made to licensed facilities during the year.~~

22 VAC 15-20-190. Modification.

~~A. The licensee may request a modification of the terms of a license at any time during the period of the license. The request must be submitted in writing to the department's representative.~~

~~The department will evaluate written information about any planned changes in operation which that would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may visit the facility during the process of evaluating a proposed modification.~~

~~Examples of such changes are: changes in the number of children or adults to be served, staff responsibilities, availability and use of the physical plant, and changes in program focus or needs of the population to be served.~~

~~B. If a modification can be is granted under the standards, the department shall will respond in writing with the modified license. In the event that a new application is needed, the licensee shall will receive written notification of such. When the modification cannot be is not granted, the licensee shall will also be advised by letter.~~

22 VAC 15-20-200. Early compliance.

A. A provisional or conditional license may be voided and a regular license issued when all of the following conditions exist:

1. The facility ~~or agency~~ complies with all standards listed on the face of the provisional or conditional license ~~well in advance of the expiration date of the provisional or conditional license~~, and the facility ~~or agency~~ is in substantial compliance with all other standards.

2. Compliance has been verified by an on-site observation by the department's licensing representative or, when applicable, by written evidence provided by the licensee.

3. All other terms of the license remain the same.

~~B. The licensee shall make a written request to the licensing representative for replacement of a provisional or conditional license with a regular license. Any request to replace a provisional or conditional license with a regular license shall be made in writing to the licensing representative not more than 60 days following issuance of the provisional or conditional license.~~

C. When the request is approved by the department, the effective date of the new regular license shall be the same as the beginning date of the voided license. When the request is not approved, the reasons for this action shall be confirmed to the licensee in writing.

~~D. Early compliance shall not be considered once a renewal application has been filed by the facility or agency.~~

22 VAC 15-20-210. Renewal process.

A. The department ~~shall~~ will send an application for renewal of the license to the licensee at least 120 days prior to the expiration date of the current license.

B. The licensee shall submit the completed application form along with any required attachments and the application fee at least 60 days prior to the expiration of the current license. ~~It is the applicant's responsibility to complete and return the application prior to the expiration of the current license to assure timely processing.~~ Should a current license expire before a new license is issued, the current license shall remain in effect provided that the completed application was filed and a decision for licensure is pending.

C. The department shall follow the procedure for investigation and notice to the applicant previously outlined in ~~22 VAC 15-20-160, 22 VAC 15-20-170, and 22 VAC 15-20-180.~~

PART V. USE OF ALLOWABLE VARIANCE

22 VAC 15-20-220. Use of allowable variances.

~~Allowable variances are used for one or more of the following:~~

- ~~— 1. To allow the department some degree of flexibility in the enforcement of requirements, given the rapid and ever-changing nature of programs and their unique settings;~~
- ~~— 2. To allow for greater development of innovative and pilot programs, which were not anticipated in the regulations; and~~
- ~~— 3. To promote equity across all programs by allowing for variable compliance methods when a regulation places special hardship on a particular facility.~~

22 VAC 15-20-230. Conditions for initiating a request.

~~A licensee or applicant may request an allowable variance when he believes that the existing regulations pose a special hardship and when he believes that either an alternative method of compliance with the intent of the regulation which that is causing the hardship, or the actual suspension of all or part of that regulation, would neither endanger the safety or well-being of persons children in care nor create a violation of statutes or of the requirements of another regulatory agency.~~

22 VAC 15-20-240. Process.

~~A. Consideration of an allowable variance is initiated when a written request to the licensing office is received from the applicant or licensee. The department's licensing representative may provide consultation to the applicant or licensee in the development of the written request and throughout the allowable variance process.~~

1. The licensee or applicant ~~shall make a written request for an allowable variance~~ may request an allowable variance by submitting a written request ~~which that describes the special hardship or hardships to the existing program or to a planned innovative or pilot program caused by the enforcement of the requirement or requirements.~~

2. ~~When possible, the~~ The licensee or applicant shall propose alternatives to meet the purpose of the requirement ~~which that will ensure the protection and well-being of persons children in care.~~

3. ~~When requested by the department, The~~ the licensee or applicant ~~should~~ shall obtain, ~~when requested by the department,~~ the opinions of professionals in the field or documented research, or both, that the proposed activities, facilities, or equipment are not injurious to ~~persons~~ children in care.

4. ~~The department can authorize allowable variances only to its own the licensing standards, not to regulations of another agency or to any requirement in federal, state, or local laws.~~

— ~~B. The department's licensing representative shall~~ will notify the petitioning applicant or licensee of the receipt of his ~~the~~ request for an allowable variance and send a recommendation to the person delegated decision-making authority by the department.

— ~~The decision is transmitted in writing to the petitioning applicant or licensee with a copy to the department's licensing representative.~~

C. Approval.

1. ~~The designated authority may attach conditions to the granting of the allowable variance in order to protect persons in care. The department may grant an allowable variance subject to conditions with which the licensee must comply.~~

2. The applicant or licensee shall inform the department if there are changes in the circumstances under which the the variance was granted.

NOTE: Allowable variances are conditional upon there being no change in the circumstances which that were the basis for the approval. Any allowable variance may be rescinded or modified if conditions change; additional information becomes known which that alters the basis for the original decision; the applicant or licensee fails to meet any conditions attached to the allowable variance; or results of the allowable variance jeopardize the safety, ~~comfort,~~ or well-being of persons children in care.

The department will review each allowable variance at least annually. At minimum, this review will address the impact of the allowable variance on children in care, adherence to any conditions attached, and the continuing need for the allowable variance.

3. Allowable variances expire automatically when there is a change in the facility's location or a change in the sponsorship of the facility ~~or agency.~~

~~EXCEPTION: Allowable variances issued to private child placing agencies and family day systems are transferable when agencies change location.~~

4. ~~The department's licensing representative shall~~ will review each allowable variance at least annually. ~~At minimum, this review shall~~ will address the impact of the allowable variance on persons

~~children in care, adherence to any conditions attached, and the continuing need for the allowable variance.~~

D. Denial.

~~1. When the decision is to deny a request for an allowable variance, the reason or reasons shall be provided in writing to the applicant or licensee.~~

~~2. When a request for an allowable variance is denied, it may be reconsidered if the applicant or licensee submits another written request and provides new or additional supporting information.~~

~~3. When a request for an allowable variance is denied by the designated decision-maker and if the petitioner believes that decision was unreasonable, arbitrary, or capricious, the petitioner may request a desk review of that decision. The following shall apply when a desk review is requested: Such request shall be made in writing, within 30 days of the issuance of the denial, and shall include such information as necessary to explain the belief that the decision was unreasonable, arbitrary or capricious or if the petitioner can provide new or additional supporting information.~~

~~a. The petitioner shall may request this desk review, . Such request shall be made in writing, within 15 30 days of the issuance of the denial and shall include such information as necessary to explain the belief that the decision was unreasonable, arbitrary or capricious.~~

~~b. The desk review shall be conducted by the person who supervises the designated decision maker, unless a different person has been assigned desk review responsibility by the Director of the Division of Licensing Programs.~~

~~c. The decision of the reviewer shall be reported in writing to the petitioner within 30 days of receiving a complete request for a desk review.~~

~~d. The reviewer's decision shall be final and not appealable.~~

E. When an allowable variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed.

F. The applicant or licensee may at any time withdraw a request for an allowable variance.

PART VI. PROBLEM SOLVING CONFERENCES

22 VAC 15-20-250. Initiating a request for a problem solving conference.

~~When an applicant or licensee has concerns about licensing procedures, interpretation of standards, or the actions of licensing personnel that cannot be resolved satisfactorily in discussion with the assigned~~

licensing representative, the problem solving steps outlined below are available.

— Licensing staff may also initiate a request for problem solving conferences with applicants or licensees when the need arises.

~~22 VAC 15-20-260. First step review.~~

— A. The applicant or licensee may request either a desk review by, or a meeting with, the assigned licensing representative's immediate supervisor.

— B. If the request stems from a desire to contest the findings or conclusions of an inspection, the following procedures shall apply:

— 1. The applicant or licensee shall make the request within 15 days of receiving the compliance plan.

— 2. The request shall specify the contested finding or conclusion and shall specify whether a desk review or conference is being requested.

— 3. The request shall include the applicant's or licensee's reasons or other evidence supporting the request for a review or a conference.

— C. The first step informal desk review or conference will be held at the supervisor's office unless the supervisor designates a different location. The following procedures shall apply:

— 1. The supervisor shall report the findings of a desk review in writing within 10 days of receiving the request and supporting materials or shall hold the requested conference within 30 days of receipt of such request and materials.

— 2. When the request is for a conference, the supervisor shall, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by the supervisor.

~~22 VAC 15-20-270. Second step review.~~

— A. If after the first step review, the applicant or licensee believes that the laws, regulations, or departmental policies have been applied or interpreted in a manner that was unreasonable, arbitrary or capricious, he may request a second step review by program supervisory personnel as assigned by the Director of Licensing Programs according to the provisions of this section.

— B. A second step review shall not be requested to challenge the content of an established law, regulation, or policy. However, the application of a law, regulation, or policy may be challenged.

~~—C. When second step reviews are requested, the request must be in writing and must specify whether the applicant or licensee is requesting a desk review or a conference. Conferences shall be held in the region or in Richmond as designated by the director; the designated location shall be as close to the operation as possible.~~

~~D. The second step review request shall:~~

~~—1. Be made within 15 days of the date of the first step response;~~

~~—2. Specify the reason for requesting the second step informal review and include such information, explanation, or additional materials as necessary to support the applicant's or licensee's belief that the decision reached at the first step was unreasonable, arbitrary or capricious; and~~

~~—3. Include a copy of relevant materials and correspondence developed at the first step of the informal appeal process.~~

~~—E. Within 30 days of receipt of this request, the director's office shall respond in writing or schedule the conference.~~

~~F. When the request is for a conference, the designated program management staff shall, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by program management staff.~~

~~22 VAC 15-20-280. Enforcement of disputed regulation.~~

~~— Nothing in this part shall prohibit the department from exercising its responsibility and authority to enforce the disputed regulation during the problem solving process, including proceeding directly to imposition of administrative sanctions, or recommending petitions for injunction when, in the judgment of the Director, Division of Licensing Programs, there is sufficient risk to persons in care to do so whether or not the steps available in the problem solving process have been exhausted.~~

~~Licensed child day centers shall follow the regulations set forth in 22 VAC 40-80-10 et seq. promulgated by the State Board of Social Services.~~

PART VII. COMPLAINT INVESTIGATION

22 VAC 15-20-290. Receipt of complaints.

Complaints may be received in written or oral form and may be anonymous. The department maintains a parental hot line to respond to complaints regarding child care operations.

22 VAC 15-20-300. Investigation of complaints.

The department has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse and neglect of ~~persons~~ children in care.

NOTE: In an investigation of adult or child abuse, neglect, or exploitation in a licensed facility, the investigation shall be conducted jointly with the local department of social services whenever possible in accordance with departmental policy.

22 VAC 15-20-310. Notification of findings.

When the investigation is completed, the licensee ~~shall~~ will be notified of the findings of the investigation. Any necessary corrective action will be identified.

22 VAC 15-20-320. Licensee's responsibility.

The licensee is responsible for correcting any areas of noncompliance found during a complaint investigation.

PART VIII. SANCTIONS

22 VAC 15-20-330. ~~Violation of standards or statutes.~~

~~The Commissioner of the Department of Social Services may impose such sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care. Such sanctions include administrative sanctions and the imposition of a civil penalty or appointment of receivership.~~

22 VAC 15-20-340. ~~Administrative sanctions.~~

~~The following are administrative sanctions which may be imposed against a licensed facility:~~

- ~~— 1. Reducing the capacity of any licensed facility;~~
- ~~— 2. Restricting or prohibiting new admissions to any licensed facility;~~
- ~~— 3. Placing a child welfare agency on probationary status;~~
- ~~— 4. Mandating training for the licensee or staff of a child welfare agency with any costs to be borne by the licensee;~~
- ~~— 5. Denying renewal of the license of any licensed facility; and~~
- ~~— 6. Revoking the current license of any licensed facility.~~

~~22 VAC 15-20-350. Civil penalty or appointment or receivership.~~

~~— In addition to the administrative sanctions listed in 22 VAC 15-20-340 the commissioner may:~~

~~— 1. Petition the circuit court for the city or county in which the facility is located to impose a civil penalty against any adult care facility; or~~

~~— 2. Petition the circuit court for the city or county in which the facility is located to appoint a receiver for any adult care facility.~~

~~22 VAC 15-20-360. Imposition of sanctions or civil penalties.~~

~~— The following reasons may be considered by the department for the imposition of administrative sanctions or the imposition of civil penalties:~~

~~— 1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;~~

~~— 2. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility or agency;~~

~~— 3. Engaging in conduct or practices which are in violation of statutes and standards relating to abuse, neglect, or exploitation of children or adults; or~~

~~4. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.~~

~~22 VAC 15-20-370. Process.~~

~~— A. The applicant or licensee will receive a notice of the department's intent to impose an administrative sanction. This notice shall describe the reasons for the imposition of the administrative sanction.~~

~~— B. Upon receipt of the notice to impose an administrative sanction, the applicant or licensee has the right to appeal the decision in accordance with the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia). The procedures for filing an appeal shall be outlined in the notice. All appeals from notice of imposition of administrative sanctions shall be received in writing from the applicant or licensee within 15 days of the date of receipt of the notice.~~

~~C. In the event the applicant or licensee does not request an appeal within 15 days, the facility or~~

agency must modify the operation to conform to the pertinent law or regulation or accept imposition of the sanction.

— D. If the facility or agency continues to operate in violation of the imposed sanction or sanctions after the date the sanction or sanctions was to have been met, the department shall initiate appropriate administrative or legal action.

E. In requesting the imposition of a civil penalty for any violation in an adult care facility, the department will recommend that the penalty not exceed the lesser of \$5.00 per licensed capacity or \$250 per day for each day the adult care facility is in violation, beginning on the date the facility was first notified of the violation. The date of notification under this sanction shall be deemed to be the date of receipt by the facility of written notice of the alleged violation. This notice shall include specifics of the violation charged and it shall be hand delivered or sent by overnight express mail or by registered or certified mail, return receipt requested.

F. Upon filing of a petition for appointment of a receiver, the court shall hold a hearing, at which time the department and the licensee of the adult care facility may participate and present evidence.

22 VAC 15-20-380. Appeals.

— A. Any applicant or licensee has the right to appeal the department's decision to impose an administrative sanction.

— B. Appeals may be heard through an informal conference or a formal hearing.

— C. If the applicant or licensee requests an appeal, he has the right to be represented by counsel at the conference or hearing.

— D. An informal conference is the initial hearing of evidence in making a case decision, unless there is a waiver or agreement between the parties to go directly to a formal hearing.

— An informal conference shall be conducted by the department's designee.

— E. In the event of an adverse decision following the informal conference, the applicant or licensee may request a formal hearing.

A formal hearing shall be conducted by an individual appointed from a roster of attorneys approved to serve as hearing officers. This roster is maintained by the Supreme Court of Virginia.

— F. Once the informal conference or formal hearing is completed, the applicant or licensee shall receive written notice of a decision.

~~—The department's designee shall render a decision within 90 days of the informal conference or from a later date agreed to by the applicant or licensee and the agency.~~

~~—A hearing officer shall render findings and recommendations within 90 days from the date of the formal hearing or from a later date agreed to by the applicant or licensee and the agency.~~

~~—The commissioner shall render a decision within 30 days from the date that the agency receives the hearing officer's recommendation.~~

~~G. If the commissioner authorizes the imposition of the sanction or sanctions, the time frame in which the facility or agency must conform to the requirements of the sanction or sanctions shall be included in the final order. The applicant or licensee may appeal the decision to the appropriate circuit court under the provisions of §§ 63.1-180 and 63.1-194.10 of the Code of Virginia.~~

~~H. If the licensee wishes to appeal the imposition of a civil penalty or the appointment of a receiver, such appeal must be made to the appropriate court in the city or county where the facility is located.~~

Licensed child day centers shall follow the regulations set forth in 22 VAC 40-80-10 et seq. promulgated by the State Board of Social Services.

ATTACHMENT I

An application form to operate a private child placing agency may be obtained from the following office:

Division of Licensing Programs

Department of Social Services

Theater Row Building

730 East Broad Street

Richmond, Virginia 23219

Telephone: (804) 692-1782

An application form to operate a licensed facility, excluding a private child placing agency, may be obtained from the following offices:

OFFICE

Abingdon Licensing Office

Piedmont Region

190 Patton Street

Abingdon, VA 24210

Telephone: (703) 628-5171

AREA SERVED

Serving counties of: Bland, Buchanan, Carroll, Dickenson, Grayson, Lee, Patrick, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe

Serving cities of: Bristol, Galax, Norton

OFFICE

Central Regional Office

Wythe Building, Suite 130

1604 Santa Rosa Road

Richmond, VA 23229-5008

Telephone: (804) 662-9743

AREA SERVED

Serving counties of: Amelia, Brunswick, Buckingham, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Westmoreland

Serving cities of: Colonial Heights, Hopewell, Petersburg, Richmond, South Boston

OFFICE

Eastern Regional Office

Pembroke Office Park

Pembroke IV Office Building

Suite 300

Virginia Beach, VA 23462-5496

Telephone: (804) 473-2100

Serving counties of: Accomack, Gloucester, Greenville, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, Surry, Sussex, York

Serving cities of: Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg

OFFICE

Fairfax Licensing Office

***30075** Northern Region

3959 Pender Drive

Fairfax, VA 22030

Telephone: (703) 359-6733

Serving counties of: Arlington, Loudoun, Fairfax

Serving cities of: Alexandria, Fairfax, Falls Church

OFFICE

Northern Regional Office

320 Hospital Drive, Suite 23

Warrenton, VA 22186

Telephone: (703) 347-6300

Serving counties of: Caroline, Culpeper, Fauquier, King
George, Prince William, Rappahannock, Spotsylvania, Stafford

Serving cities of: Fredericksburg, Manassas, Manassas Park

OFFICE

Piedmont Regional Office

Commonwealth of Virginia Building

210 Church Avenue, S.W., Suite 100

Roanoke, VA 24011-1779

Telephone: (703) 857-7920

Serving counties of: Alleghany, Amherst, Appomattox, Bath,
Bedford, Botetourt, Campbell, Craig, Floyd, Franklin, Giles,
Henry, Montgomery, Nelson, Pittsylvania, Pulaski, Roanoke,
Rockbridge

Serving cities of: Bedford, Buena Vista, Clifton Forge,
Covington, Danville, Lexington, Lynchburg, Martinsville,
Radford, Roanoke, Salem

OFFICE

Peninsula Licensing Office

Eastern Region

825 Diligence Dr., Suite 203

Newport News, VA 23606

(804) 594-7594

Serving counties of: Gloucester, Isle of Wight, James City,
Mathews, Middlesex, Surry, Sussex, York-Poquoson

Serving cities of: Hampton, Newport News, Williamsburg

OFFICE

Verona Licensing Office

Northern Region

Post Office Box 350

Verona, VA 24482-0350

Telephone: (703) 332-8900

Serving counties of: Albemarle, Augusta, Clarke, Frederick,
Greene, Highland, Madison, Orange, Page, Rockingham,
Shenandoah, Staunton, Warren

Serving cities of: Charlottesville, Harrisonburg,
Waynesboro, Winchester.

<General Materials (GM) - References, Annotations, or
Tables>

